IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 35952 of 2007(E)

AGAINST THE ORDER IN EP. 68 /2006 IN
ARC.155/2000 of SUB COURT, MANJERI

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PETITIONER:

T.ABOO, AGED 60 YEARS,
S/O MOHAMMED, THENGILAKATH HOUSE,
PARAMMAL, AMBALAKKADAVU P.O.,
KAIKAVU, MALAPPURAM DIST.

BY ADV. SRI.P.SAMSUDIN

RESPONDENT:

THE SECRETARY,
NILAMBUR TALUK HOUSING CO-OPERATIVE SOCIETY,
NILAMBUR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.35952 of 2007

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Dated this the 5th day of December, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside the order of the Subordinate Judge, Manjeri ordering sale of the property. The main grievance is that the property ordered to be sold is 29 cents of land with a residential building, 5 coconut trees, areca nut palms, pepper wine, mango, jack fruit, tamarind trees and other timber trees and it will worth Rs.20 lakhs whereas the court has fixed the upset price at Rs.5 lakhs. It is further contended that the sale of a portion of the property will be sufficient for the discharge of the decree debt. It is not clear from the materials available whether it is a mortgaged decree or not. If it is mortgaged decree as held by the court in **Dhanalakshmi Bank** v. **Divakaran** - 2000(2) K.L.T. 231, a portion of the property cannot be ordered to be sold because the Executing Court has no such power. If it is mortgaged decree and if there is a petition filed by the decree holder for permission to bid then Order 21

Rule 72A of C.P.C. contemplates a situation of fixing the reserve price and it shall not be less than the amount due to the decree holder. It is further to be stated whether the property has properly valued for the purpose of sale also is a matter to be taken into consideration.

2. Therefore, I direct the court below to defer the sale posted on 12.12.2007 by six weeks, conduct a further enquiry into the matter, pass appropriate orders and then order sale of the property in accordance with law.

Writ Petition is disposed of as above.

M.N.Krishnan,
Judge.

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